IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10925 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KAMLESHBHAI AMBALAL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10925 of 2004

MR BS PATEL for Petitioner No. 1-4

MRS RANJAN B PATEL for Petitioner No. 1-4

Mr. Mukesh A. Patel, AGP for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 20/01/2005

ORAL JUDGEMENT

Draft Amendment is allowed. The petitioner to carry out the amendment by 25th January 2005.

2. Rule. Shri Mukesh A. Patel, learned AGP waives service of Rule on behalf of respondents No.1 and 2. With the consent of parties, the matter is taken up for final hearing today.

3. In this petition under Article 226/227 of the Constitution of India, the petitioners have challenged the legality and validity of the order passed by the Collector, Ahmedabad dated 26th April 2004 and also the order passed by the Secretary (Appeals), Revenue Department, State of Gujarat dated 27.8.2004 in Revision Application No. 17/2004 in rejecting the application of the petitioner for staying the implementation and operation of the order passed by the Collector, Ahmedabad, dated 26th April 2004. By way of amendment, the petitioner has also produced on record one subsequent communication dated 26th December 2004 issued by the Collector, Ahmedabad by which it is stated that the impugned order dated 26th April 2004 is with regard to the land bearing Survey Nos. 549/1 to 549/4 and not only with regard to Survey Nos. 549/1 and Survey No. 549/3. Shri BS Patel, learned advocate has submitted that the petitioner is in fact required to amend the Revision Application No. 17 of 2004 to the aforesaid effect also.

4. In view of the fact that the Revision Application No. 17/2004 is pending before the Secretary (Appeals) and by order dated 27.8.2004 the interim relief was refused and in the Revision Application No. 17 of 2004 the order passed by the Collector dated 26th April 2004 is challenged, this petition is not entertained with regard to challenging the order passed by the Collector, Ahmedabad, dated 26th April 2004. However, in view of the fact that the Revision Application seems to be pending before the Secretary (Appeals) against the impugned order dated 26th April 2004 passed by the Collector, Ahmedabad and in view of the fact that while issuing notice by this Court ad-interim relief in terms of paragraph 8(B) is granted, meaning thereby the execution and implementation of the order passed by the Collector, Ahmedabad dated 26th April 2004 is granted, without entering into the merits of the case and legality and validity of the order passed by the Secretary (Appeals) dated 27.8.2004 passed in Revision Application No. 17/2004, the Secretary (Appeals), Revenue Department, State of Gujarat is directed to decide and dispose of the Revision Application No. 17/2004 if not decided so far within the period of 8 weeks from the date of receipt of this order. It will be open for the petitioner to move an appropriate application for amendment in the Revision Application No. 17/2004

challenging the order passed by the Collector, Ahmedabad dated 26th April 2004 also which may be considered by the Secretary (Appeals) in accordance with law and on merits. It is further ordered that until decision is rendered on Revision Application No. 17/2004, as stated above the ad-interim relief as granted earlier shall continue. It is made clear that this Court has not expressed anything on merits of the case. It is ultimately for the Secretary to the Revenue Department to decide and dispose of the same in accordance with law and on merits after giving opportunity to the concerned parties.

5. With this observation and direction, the present Special Civil Application is disposed of. Rule is made

absolute to the aforesaid extent with no order as to costs. Direct service is permitted.

rmr. [M.R. Shah, J.]